

REMARKS

In the Office Action, claims 16-19, 21-32 and 34-44 were rejected. By the present Response, claims 16, 23 and 28 are amended. Upon entry of the amendments, claims 16-19, 21-32 and 34-44 will remain pending in the present patent application. Reconsideration and allowance of all pending claims are requested.

Claims Objections

In the Office Action, the Examiner requested that the Applicants provide support of claim 28 in the specification. Accordingly, Applicants have referenced portions of the specification relating to claim 28 in traversing the rejection under Section 112, second paragraph (see below). Accordingly, Applicants maintain that the specification fully supports the subject matter recited by the claims.

Rejections Under 35 U.S.C. § 112, First Paragraph.

In the Office Action, the Examiner rejected 16-19, 21-32 and 34-44 under Section 112, first paragraph, as failing to comply with the written description requirement. Although Applicants do not necessarily concede to the Examiner's assertions, Applicants have amended the claims so as to overcome the rejection made by the Examiner. Accordingly, independent claims 16, 23 and 28 have been amended to recite transmitting "only the updated data" and/or transmitting "only the updated interface page," in accordance with the specification. *See*, Application, page 15, lines 19-22.

Rejections Under 35 U.S.C. § 112, Second Paragraph.

In the Office Action, the Examiner rejected claims 16-19, 21-32 and 34-44 under Section 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter for which protection is sought. Particularly, the Examiner asserted that the means plus function language in claim 28 and a number of claims depending therefrom have no identified structure in the specification, rendering the elements indefinite. Applicants traverse these rejections.

Although the Examiner may take exception to the terms used in the claims, the patentee may be his own lexicographer. *Ellipse Corp. v. Ford Motor Co.*, 171 U.S.P.Q. 513 (7th Cir. 1971), *aff'd*, 613 F.2d 775 (7th Cir. 1979), *cert. denied*, 446 U.S. 939 (1980). The Examiner is also reminded not to equate breadth of a claim with indefiniteness. *In re Miller*, 441 F.2d 689, 169 U.S.P.Q. 597 (CCPA 1971).

In contrast to assertions made by the Examiner, Applicants submit that the specification does identify structure of corresponding elements recited by the claims, clearly rendering the elements definite. With regard to the aspect of the invention set forth in independent claim 28, discussions of the recited features of claim 28 can be found at least in the below cited locations of the specification and drawings. An embodiment in accordance with claim 28 provides a system (*e.g.*, 10) for monitoring a fetal condition. *See, e.g., id.* at page 4, lines 27-29; *see also* Fig. 1. The system comprises means (*e.g.*, 20) for detecting a fetal parameter of interest and for generating a fetal condition signal representative thereof. *See, e.g., id.* at page 4, lines 17-27; *see also* Fig. 1. The system further comprises means (*e.g.*, 24) for storing the fetal condition signal, and means (*e.g.*, 14) for defining a general purpose network presentation including data representative of the fetal condition signal. *See, e.g., id.* at page 6, lines 9-13; page 7, line 24-page 8, line 9; *see also* Fig. 1. The system further comprises means (*e.g.*, 28, 32) for transmitting the presentation to a general purpose display station via a configurable network (*e.g.*, 16) link upon receipt of a command from the display station (*e.g.*, 14), wherein the presentation is transmitted in a real time mode or in a historical mode, and wherein the display station comprises a general purpose computer and a browser that operates to display the network presentation. *See, e.g., id.* at page 16, lines 7-13; page 8, lines 1-4; page 7, lines 13-16; *see also* Fig. 1. Further, the system comprises means for updating the presentation to include updated data representative of the fetal condition, means for transmitting only the updated data to the general purpose display station only when the presentation is transmitted in real time mode. *See, e.g., id.* at page 11, lines 27-30; page 15, lines 19-22.

With regard to claims 29-32, 34-35 and 42-44, depending from base claim 28, Applicants contend that those claims are allowable based on their dependency from independent claim 28. Further, Applicants contend that the specification fully supports recitations of those dependent claims and clearly renders elements thereof as being definite. Accordingly, Applicants refer the Examiner to the specification, particularly, to Figs. 1-4 and their corresponding description.

Rejections Under 35 U.S.C. § 102 and/or § 103

In the Office Action, claims 28-32, 34, 42-43 were rejected under Section 102(e) as being anticipated by Frid et al., (U.S. Patent No. 5,857,967, hereinafter "Frid"), or, in the alternative, under Section 103(a) as being obvious over Frid in view of Gat (U.S. Patent No. 5,954,663, hereinafter "Gat"), and/or Egler (U.S. Patent No. 5,458,116, hereinafter "Egler"). Applicants traverse these rejections.

Legal Precedent For Section 102

Anticipation under 35 U.S.C. § 102 requires a showing that each limitation of a claim is found in a single reference, practice or device. *In re Donohue*, 226 U.S.P.Q. 619, 621 (Fed. Cir. 1985).

Legal Precedent For Section 102

The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (PTO Bd. App. 1979). Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention absent some teaching or suggestion supporting the combination. *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 732 F.2d 1572, 1577, 221 U.S.P.Q. 929, 933 (Fed. Cir. 1984). Accordingly, to establish a *prima facie* case, the Examiner must not only show that the combination includes *all* of the claimed elements, but also a convincing line of reason as to why one of ordinary skill

in the art would have found the claimed invention to have been obvious in light of the teachings of the references. *Ex parte Clapp*, 227 U.S.P.Q. 972 (B.P.A.I. 1985). When prior art references require a selected combination to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gained from the invention itself, i.e., something in the prior art as a whole must suggest the desirability, and thus the obviousness, of making the combination. *Uniroyal Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 5 U.S.P.Q.2d 1434 (Fed. Cir. 1988). One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

Frid Does Not Disclose Transmitting Only Updated Data

Turning now to the claims, amended independent claims 16 and 28 recite a method for monitoring a fetal condition comprising the acts of transmitting a presentation, which includes data acquired by a monitor such that “*only the updated data* [is transmitted]...only when the presentation is transmitted in real time mode” (emphasis added). Similarly, independent claim 23 recites a method defining a user variable interface page and “transmitting *only the updated interface page*” (emphasis added).

In contrast, Frid does not disclose transmitting only the updated data, as required by the claims. At best, Frid discloses an electrocardiogram device that provides “real-time electrocardiogram data to an external web browser.” Frid, col. 4, lines 35-36. Thus, in Frid there is no distinction as to what constitutes real-time data, certainly not to the extent which would distinguish real-time transmission of data as transmission of only new or updated data, as recited by the claims. Therefore, Frid clearly can not anticipate independent claims 16, 23 and 28.

Further, Gat and Egler do not cure the deficiencies of Frid because they, too, fail to disclose transmitting only the updated data, as recited by amended independent

claims 16, 23 and 28. Accordingly, Gat and Egler do not obviate independent claims 16, 23 and 28 and, therefore, can not constitute grounds for rejection under Section 103.

For at least these reasons, Frid does not anticipate the claims or, in the alternative, when combined with Gat and Egler, those references do not render the claims as obvious. Accordingly, Applicants, request the Examiner to withdraw the rejection under Sections 102 and 103 and allow independent claims 16, 23 and 28 and claims depending therefrom.

Conclusion

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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